

# Missouri Work Compensation Case Law Summary

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### Authors' Note

This case update includes summaries of cases concerning workers' compensation which have not been included in previous updates, generally concerning cases appearing in volumes 485 S.W.3d to □ S.W.3d of West's Missouri Cases with exceptions noted. Cases are arranged in sections corresponding to the chapters of Volume 29 with which they are concerned. Cases may be listed in more than one section. Some summaries reprinted by permission of Thomas-Reuters as copyright protected from the fine work of B. Michael Korte's supplement to MO Practice.

### Arising out of and in the Course of Employment

#### **Lincoln University v. Narens, 485 S.W.3d 811 (Mo. Ct. App. W.D. 2016)**

An award of the labor and industrial relations commission was affirmed. An employee who was injured while walking to the employer's parking while leaving work was in the course and scope of employment since the employee was not equally exposed in nonemployment life to the risk of the steep drop off from the employer's sidewalk from which she fell, and not from the mere act of walking.

The extension of premises doctrine necessarily encompasses injuries to employees who are not engaged in the performance of job duties at the time of the injury.

#### **Campbell v. Trees Unlimited, Inc., 505 S.W.3d 805 (Mo. Ct. App. S.D. 2016)**

An award of the labor and industrial relations commission was affirmed. An self-employed employee whose work involved travel away from his employer's principal place of business was not necessarily beyond the course of employment merely because the employee had not yet arrived at the location of the employer's principal place of business at the time of the employee's accident.

**Bonnie Jensen-Price v Encompass Medical Group - WD 79526 - ACCEPETED BY MO SCT so opinion has been vacated- parties settled case so case remanded from SCT to the Commission for settlement**

*A Claimant can sustain an accident in the course and scope of her employment when leaving work in a commercial building if she otherwise was engaged in the work activity of taking work home.*

Claimant worked as nurse practitioner and was leaving her office building when a housekeeper ran into her in the hallway with his cart causing her to fall and injure her back. She testified that she was carrying her purse and dragging her portable lap top that she was taking home to do more work with when the accident happened.

The ALJ denied the claim based upon the fact the Employer did not own nor control the area where accident occurred. The labor and industrial relations commission affirmed the denial but instead of finding that the accident was not in the course of her employment found instead that she was engaged in work in bringing her work computer home, but that there was insufficient evidence identifying the risk cause of the accident.

The court reversed the denial of benefits and awarded compensation finding that the risk source of the injury was simply the collision with the cart.

#### **Ulysses White (deceased) v Conagra WD 79449 - ACCEPETED BY MO SCT**

*A heart attack that occurs at work that is an accident defined as an unexpected traumatic event can be deemed the prevailing factor constituting a compensable case.*

Ulysses White (White) sustained a fatal heart attack after working in a hot environment while at work. He had multiple risks factors for a heart attack. The ALJ and the commission denied compensation based upon the evidence presented that the work conditions were the prevailing factor in causing White's death. It was admitted that White sustained an accident as defined as an "unexpected traumatic event." The ALJ and the commission denied compensation based upon the medical causation question of whether White's work environment was the prevailing factor in causing the resulting medical condition and disability.

The court reversed and provided for benefits finding legal error redefining the applicable question to be whether the admitted accident was the prevailing factor in causing the resulting heart attack and death.

#### **Lankford (deceased) v Newton County SD 34269 - ACCEPETED BY MO SCT**

*For occupational disease cases, no comparison of "no greater hazard" under section 287.020 RSMO is required or permitted.*

Claimant was a long time investigator for Newton County who take his smoke breaks on the roof because it was quiet and he could think about the case he was working on. The roof of the courthouse was a popular place for pigeons, and pigeon droppings accumulated there. While on the roof, other deputies, investigators, and city detectives would seek Lankford out to talk to

him about work-related matters.

Claimant filed a claim asserting that during the course and scope of his employment with Employer, he was exposed to pigeon droppings and as a result, sustained injury to his lungs and respiratory system. Lankford died due to complications of pneumonia and COPD.

The ALJ and Commission awarded benefits to Claimant's widow also finding that the "unequal exposure" requirement in section 287.020.3(2) is not applicable to occupational disease cases.

"[I]n applying the plain language of sections 287.020.3 and section 287.067, which must be strictly construed pursuant to section 287.800.1, it could not impose the "unequal exposure" requirement found in section 287.020.3 to this claim because the statutory language contained no such requirement."

### **Mantia v MODOT ED 103016, - ACCEPETED BY MO SCT**

*Section 287.120.8 RsMo, in light of strict construction, does not require comparison of exposure to stress involving similarly situated employees.*

Claimant worked for the Missouri Department of Transportation for 20 years. Her job included cleaning up and providing assistance at motor vehicle accidents up to four times a week and later she and her crew were assigned only the worst accidents. Claimant witnessed catastrophic scenes of dismemberment and death. She worked over 1,000 scenes. She developed what all evaluating and treating physicians diagnosed PTSD related to this work.

The Employer defended the claim based upon the argument that all highway workers doing her job are similarly exposed and therefore the exposure was not "extraordinary and unusual" as required in section 287.120.8.

The court affirmed the awarding of benefits provided by the commission finding that section 287.120.8 does not require the "unusual and extraordinary" stress to be determined by comparison with other coworkers similarly situated.

### **Injuries, Accidents and Occupational Diseases**

#### **Wickam v. Treas.-Cust. Of Second Injury Fund, 499 S.W.3d 751 (Mo. Ct. App. W.D. 2016)**

An award of the labor and industrial relations commission was reversed and remanded. The date of an employee's repetitive motion injury was the first date of any evidence that the employee's earning capacity was impaired, or that the employee required work restrictions, demonstrating the employee's physical impairment that affected the employee's ability to perform work tasks.

## **Affirmative Defenses to Liability**

### **Cook v. Missouri Highway And Transp Com'n, 500 S.W.3d 917 (Mo. Ct. App. S.D. 2016)**

An award of the labor and industrial relations commission was affirmed. An occupational disease is not reasonably discoverable and apparent to an employee for purposes of the commencement of the period of limitation if it is not reasonably discoverable and apparent to trained medical experts, especially where a trained medical expert has informed the employee that the employee does not have an occupational disease.

## **Benefits**

### **Jim Plunkett, Inc., v. Ard, 499 S.W.3d 333 (Mo. Ct. App. W.D. 2016)**

An award of the labor and industrial relations commission was affirmed. Permanent disability benefits payable pursuant to The Workers' Compensation Law accrue when an employee reaches maximum medical improvement, and not when benefits are paid, and may be payable to dependents of employees who die from unrelated causes after reaching maximum medical improvement for a work-related injury.

### **Hall v. Missouri State Treasurer, 500 S.W.3d 282 (Mo. Ct. App. S.D. 2016)**

An award of the labor and industrial relations commission was affirmed. The Workers' Compensation Law requires the labor and industrial relations commission to credit objective medical findings instead of relevant subjective findings only when the objective finds address a specific dispute between the parties as to compensability or disability.

### **Jefferson City Country Club v. Pace, 500 S.W.3d 305 (Mo. Ct. App. W.D. 2016)**

An award of the labor and industrial relations commission was affirmed. An employee who continued to engage in the rehabilitative process was entitled to temporary total disability benefits by attempting to be restored to a condition of health or normal activity by seeking reasonable and necessary medical rehabilitation to cure and relieve a work-related injury, even if that treatment was not successful.

### **City of Columbia v. Palmer, 504 S.W.3d 739 (Mo. Ct. App. W.D. 2016)**

An award of the labor and industrial relations commission was affirmed. The schedule of losses in V.A.M.S. §287.190 applies only to claims for permanent partial disability and does not limit the amount of compensation that can be awarded for permanent total disability.

## **Dennis Hadley (Deceased) v Beco Concrete Products, SD 34191**

*An asserted safety penalty was denied against an employee failing to wear seat belt.*

Dennis Hadley (Hadley) died when he drove his truck off the side of a highway. The Employer asserted a safety penalty consistent with section 287.120.5 having presented evidence of its safety policy that its employees were to obey all rules of the road. There was evidence that he was driving too fast for the conditions of the road.

The Employer also contested how the death benefits were to be calculated using the 13 weeks of earnings before the accident consistent with section 287.250 RsMo. Section 287.240(2) RsMo however calls for the calculation to be based upon the year of earnings prior to the fatal injury. The commission cited 287.250.4 RsMo that provides the commission discretion in computing any rate, and calculated the rate upon the average of two full time truck drivers for the year prior to the date of the fatal accident.

The court affirmed the commission on both issues. There was no evidence of “adoption” of the safety policy by the Employer affirming also the finding that the policy was too vague. They also deferred to the commission on its calculation of the rate.

## **The Second Injury Fund**

### **Treasurer of State v. Horton, 497 S.W.3d 812 (Mo. Ct. App. W.D. 2016)**

An award of the labor and industrial relations commission was affirmed. Hearing loss is a disability to the body as a whole and not to an extremity.

### **Richard Gettenby v SIF, WD80052 - APPEALED TO MO SCT**

*If primary injury is one by accident, not occupational disease, despite occurring after January 1, 2014, all prior disabilities are relevant for Second Injury Fund liability and are to be considered under pre January, 2014 statute for permanent total disability claims.*

The claimant, a career plumber, suffered a right knee injury in March 2014. This injury was the latest of five prior work and non-work related injuries. In 1977, the first injury resulted in the fusion of the toes on his left foot and the fusion of his left ankle. The claimant’s gait changed as a consequence of this injury forcing him to walk with a "real bad limp." He was unable to walk naturally, bend his ankle, flex his foot, navigate stairs, rise on his toes, walk backward, or walk easily on uneven ground.

The claimant also suffered two additional work related injuries in 2007 and 2009 resulting in a 17.5 percent disability to each shoulder. He suffered a non-work related injury requiring several surgeries returning to work in 2012 and worked until the March 2014 injury giving rise to the current claim. At issue was the interpretation of changes effective January, 2014 outlining SIF

liability for permanent total disability cases. Subsection 287.220.2 and 287.220.3, respectively, state in pertinent part as follows:

“§287.220.2. All cases of permanent disability where there has been previous disability due to injuries occurring prior to January 1, 2014, shall be compensated as provided in this subsection.

§ 287.220.3 All claims against the second injury fund for injuries occurring after January 1, 2014, ... shall be compensated as provided in this subsection.”

By applying strict construction and citing rules of statutory construction, the court found that the legislature intended the old statutory framework for SIF liability to be applicable in accident cases that occurred after January 2014 if any prior claimed disability existed before January, 2014.

### **Procedure**

#### **Malam v. State, Dept. Of Corrections, 492 S.W.3d 926 (Mo. 2016)**

An award of the labor and industrial relations commission which denied compensation was reversed and remanded. Testimony by a medical expert that an event was the direct, proximate and prevailing factor precipitating an employee’s injury was sufficiently competent and substantial to prove that the event was the prevailing factor in the cause of the injury.

#### **Bowman v. Cent. Missouri Aviation, Inc., 497 S.W.3d 313, (Mo. Ct. App. W.D. 2016)**

An award of the labor and industrial relations commission which denied compensation was affirmed. Deference was required to the commission’s determination of the weight to be given to the evidence and the determination of the credibility of the expert testimony.

#### **Edwards v. Zweifel, 498 S.W.3d 860, (Mo. Ct. App. E.D. 2016)**

An appeal was dismissed. An order of the labor and industrial relations commission which substituted an employee’s widow for the decedent was not a final order which determined the merits of the widow’s claim to the decedent’s benefits.

#### **Janet Anhalt v Penmac Personnel Services, SD 34420**

*Notice to the parties is required by the Commission if they will be raising an argument or issue not addressed in the litigation.*

“Penmac, a personnel staffing service, employed Claimant to perform seasonal or temporary services for Penmac's clients, including a food plant ("Reckitt"). After working her Reckitt shift one winter day, Claimant slipped on ice, fell, and was injured while walking to her car in Reckitt's parking lot.

Claimant pursued a workers' compensation claim against Penmac. The parties agreed that Penmac employed Claimant, but Reckitt owned and controlled the parking lot, facially barring relief because after-work injuries generally are not compensable and an extended-premises exception now lies only if *the employer* owns or controls the site of the accident. *See Scholastic, Inc. v. Viley*, 452 S.W.3d 680, 683-84 (Mo. App. 2014) (citing § 287.020.5).”

The ALJ denied the claim but the commission reversed finding sua sponte that the Claimant was a joint employee of both Penman and Reckitts and therefore found the accident compensable.

The court reversed finding that the commission can not act independent of the arguments presented without due notice to the parties of the issue. “Whether or not the Commission can reach non-appealed issues, [d]ue process ... contemplates the opportunity to be heard at a meaningful time and in a meaningful manner.”

#### **Treasurer of The State of Mo v. Majors, 506 S.W.3d 348 (Mo. Ct. App. W.D. 2016)**

An award of the labor and industrial relations commission was affirmed. The commission could properly award permanent total disability compensation pursuant to The Workers' Compensation Law to an employee even though the only medical expert to testify did not precisely and expressly state that he “certified” that the employee was “permanently and totally disabled”, since, when read in context, the plain meaning of the expert’s testimony was to that effect.

The commission could properly consider the testimony of a non-physician vocational expert in determining whether to award permanent total disability compensation to an employee.

#### **Carter v. Treasurer of MO., 506 S.W.3d 368 (Mo. Ct. App. W.D. 2016)**

A dismissal by the labor and industrial relations commission of a motion for substitution was affirmed. The commission had no jurisdiction to substitute an alleged dependent widow of a worker who died from causes unrelated to the worker’s prior award of permanent total disability compensation pursuant to The Workers’ Compensation Law once the award had become final.

**Carter v. Treasurer of MO., 506 S.W.3d 373 (Mo. Ct. App. W.D. 2016)**

A judgement of a circuit court was reversed. A court had no jurisdiction to determine allegedly outstanding factual issues or draw any legal conclusions not already found in an award registered by the court performing its ministerial duty pursuant to V.A.M.S. §287.500.

**Related Rights, Liabilities and Causes of Action**

**State v. Frese, 487 S.W.3d 71 (Mo. Ct. App. W.D. 2016)**

A dismissal by a circuit court was affirmed. The period of limitation for the prosecution of violations of the criminal provisions of The Workers' Compensation Law begins to run when a violation is discovered by an agent of the State of Missouri such as the Fraud Unit of the department of labor, and not merely when that agent prepares a probable cause statement or refers the violation to the attorney general of Missouri.

**Parr v. Breeden, 489 S.W.3d 774 (Mo. 2016)**

A summary judgment of a civil cause of action by a circuit court was affirmed. A co-employee's duty to a fellow employee to follow and enforce federal safety regulations results from the employees' relationship to their employer and is part of the employer's non-delegable duty to enforce rules of conduct designed to keep employees safe for which the co-employee is immune from liability, even where the co-employee admits responsibility for the safety of fellow employees.

**Peters v. Wady Industries, Inc., 489 S.W.3d 784 (Mo. 2016)**

A dismissal of a civil cause of action by a circuit court was affirmed. Creation by a co-employee of a work environment that is unsafe in regard to an employee is a breach of the non-delegable duty of the employees' employer to provide a safe workplace for which the co-employee is immune from liability, and not attributable to the co-employee's performance of the details of work assigned to the co-employee by the employer.

**Abbott v. Bolton, 500 S.W.3d 288 (Mo. Ct. App. E.D. 2016)**

A summary judgment of a civil cause of action by a circuit court was reversed and remanded. The alleged negligence of a co-employee who drove over an employee's foot was in violation of the co-employee's duty of care in regard to performance of work duties assigned to the co-employee by the employer for which the co-employee could be liable, and not merely a breach of the non-delegable duty of the employer to provide a safe work environment for which the co-employee would be immune from liability.



**Berliner v. Milwaukee Elec. Tool Corp., 501 S.W.3d 59 (Mo. Ct. App. E.D. 2016)**

A dismissal of a civil cause of action by a circuit court was reversed and remanded. A business that was carrying out the non-delegable duties of an employer to provide a safe work environment to a decedent was not immune from liability to the decedent as a co-employee of the decedent.

**Fowler v. Phillips, 504 S.W.3d 107 (Mo. Ct. App. E.D. 2016)**

A summary judgment of a civil cause of action by a circuit court was reversed and remanded. The alleged negligence of a co-employee who collided with an employee while operating their employer's vehicle on the employer's property was in violation of the co-employee's duty of care in regard to performance of work duties assigned to the co-employee by the employer for which the co-employee could be liable, and not merely a breach of the non-delegable duty of the employer to provide a safe work environment for which the co-employee would be immune from liability.

**Lambrich v. Kay, 507 S.W.3d 66 (Mo. Ct. App. E.D. 2016)**

A judgement of a circuit court in a civil action was affirmed. Claims for damages indirectly caused by an employer's denial and interference with its employee's medical treatment for a work-related injury are within the exclusive jurisdiction of the labor and industrial relations commission.

Claims for damages caused by an employer's improper investigation and administration of its employee's workers' compensation claim are within the exclusive jurisdiction of the labor and industrial relations commission.

Claims for damages due to financial losses and psychological injuries relating to an employee's workers' compensation claim are within the exclusive jurisdiction of the labor and industrial relations commission.

**The following cases are/were pending at the Missouri Supreme Court all deal with co-employee liability:**

Michael E. Conner, Plaintiff-Appellant, v. Dale Ogletree and Scott Kidwell, Defendants-Respondents. SD33342

Andrew Garrett vs. Michael Brown WD78443

Matthew Fogerty, Plaintiff/Appellant, v. Rick Armstrong, Defendant, and Larry Meyer, Defendant/Respondent, ED100947

Nadine MComb vs. Gregory Norfus and Davis Cheese WD77761

Christopher Nolen and Lisa Nolen, Appellants, vs. Gary Bess, Derek Eaves and Kasey Guss,  
Respondents . ED101591

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